



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

CNC, FF

### Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that the Application for Dispute Resolution, the Notice of Hearing, and 19 pages of evidence the Tenant submitted with the Application for Dispute Resolution were sent to the Landlords, via registered mail, although she does not recall the date of service. The male Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

The Tenant submitted 2 pages of evidence to the Residential Tenancy Branch on November 15, 2016. The Tenant stated that this evidence was mailed to the Landlord; although she does not recall the date it was mailed. The male Landlord acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

The Tenant submitted 2 pages of evidence to the Residential Tenancy Branch on November 15, 2016. The Tenant stated that this evidence was mailed to the Landlords; although she does not recall the date it was mailed. The male Landlord acknowledged receipt of this evidence, although he does not recall when it was received. As there is no evidence that this evidence was not received by the Landlord in accordance with the timelines established by the Residential Tenancy Branch Rules of Procedure, it was accepted as evidence for these proceedings.

The Landlords submitted 13 pages of evidence to the Residential Tenancy Branch on November 18, 2016. The male Landlord stated that this evidence was mailed to the Tenant on November 17, 2016. The Tenant acknowledged receipt of this evidence, although she does not recall when it was received. As there is no evidence that this evidence was not received by the Tenant in accordance with the timelines established by the Residential Tenancy Branch Rules of Procedure, it was accepted as evidence for these proceedings.

The Tenant stated that on November 23, 2016 she submitted 7 pages of evidence to the Residential Tenancy Branch. The Tenant stated that she mailed this evidence to the Landlords sometime around November 23, 2016, although she does not recall the exact date it was mailed. The male Landlord stated that this evidence has not been received.

The Tenant was advised that I was not in possession of the evidence she stated was submitted on November 23, 2016. She was advised that she may testify about this evidence and that if she considered it necessary for me to physically view any of the documents she may request an adjournment.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

### Issue(s) to be Decided

Should the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, be set aside?

### Background and Evidence

The Landlords and the Tenant agree that:

- the tenancy began on May 01, 2015;
- the tenancy was for a fixed term, the fixed term of which ended after one year;
- the tenancy continued on a month-to-month basis after the end of the fixed term;
- the current monthly rent is \$1,600.00;
- the tenancy agreement stipulates that rent is due by the first day of each month;
- a 1 Month Notice to End Tenancy for Cause was served on the Tenant on October 06, 2016, which declared that the Tenant must vacate the rental unit by November 30, 2016; and
- the reason cited for ending the tenancy on the Notice to End Tenancy were that the Tenant was repeatedly late paying rent.

The Tenant stated that when this tenancy began she had a conversation with the female Landlord at which time the female Landlord agreed that rent could be late by a day or two because the Tenant was paying her rent by e-transfer. The female Landlord stated that she never agreed that rent would be due on any other day than the first day of each month.

The male Landlord stated that during a conversation in April of 2016 the Tenant was reminded of her obligation to pay rent by the first day of each month. The male Landlord stated that during a second conversation in May of 2016 the Tenant was reminded of her obligation to pay rent by the first day of each month.

The Tenant stated that the Landlords did not remind her of her obligation to pay rent in

April or May of 2016 and that she was under the impression that Landlords did not mind if she paid her rent a day or two late.

The Landlords submitted a letter from an individual the male Tenant stated was their plumber, which is dated November 14, 2016. In this letter the "author" stated that he overheard the male Landlord tell the Tenant that her rent is due on the first day of each month and that it should not be late again. The male Landlord stated that the Landlords wrote the letter on behalf of the plumber, who authorized them to submit the letter.

The Tenant stated that on November 23, 2016 she submitted a letter to the Residential Tenancy Branch, dated November 23, 2016. In this letter a third party declared that he contacted the "author" of the letter dated November 14, 2016, who advised him that he did not write the letter and he has no recollection of the events mentioned in the letter.

The Landlord asked to call the "author" of the letter dated November 14, 2016. I dialed the telephone number provided and received a message from a person with the same name as the "author". As he could not be contacted, he did not testify at the hearing

The female Landlord stated that rent for May of 2015 was paid on May 02, 2015. The Tenant stated that it was paid on May 01, 2015.

The female Landlord stated that rent for July of 2015 was paid on July 04, 2015. The Tenant stated that it was paid on July 02, 2015.

The Tenant submitted a text message, dated July 01, 2015, in which she informed the Landlord that she is unable to transfer the full amount of her rent for July of 2015. The female Landlord responded to that text, in which she declared that paying rent the next day would be "fine".

The female Landlord stated that rent for August of 2015 was paid on August 04, 2015. The Tenant stated that it was paid on August 01, 2015.

The Tenant stated that in the evidence she submitted on November 23, 2016 she submitted a text message she sent to the Landlord on August 01, 2015. As neither I nor the Landlord was in possession of this text message at the time of the hearing, the Tenant read out the text message, which she stated read:

Hello Elizabeth. I have transferred rent for Aug. Have a beautiful weekend.

The female Landlord stated that she does not recall receiving that message. The parties were advised that if, during my deliberations, I considered this message to be highly relevant to my decision I would adjourn the hearing to provide the Landlord with the opportunity to physically view that evidence. As the Landlords bear the burden of proving rent was not paid on time, I find that I am able to render a decision in this matter without physically viewing this text message. I therefore did not reconvene the hearing.

The female Landlord stated that rent for May of 2016 was paid on May 04, 2016. The

Tenant stated that it was paid on May 02, 2016.

The Tenant submitted a text message, dated May 03, 2016, in which the Tenant informs the female Landlord that rent will be paid “by tomorrow evening”. Upon viewing this text message the Tenant acknowledged that rent was not pay until May 04, 2016.

The female Landlord stated that rent for July of 2016 was paid on July 03, 2016. The Tenant stated that it was paid on July 02, 2016.

The Tenant submitted a text message, dated July 02, 2016, in which the Tenant informs the female Landlord that rent will be paid “by Monday”.

The female Landlord stated that rent for October of 2016 was paid on October 02, 2016. The Tenant stated that it was paid on October 02, 2016.

The Tenant submitted a text message, dated October 01, 2016, in which the Tenant informs the female Landlord that rent will be paid “tomorrow morning”.

### Analysis

On the basis of the tenancy agreement submitted in evidence I find that rent was due by the first day of each month. When one party alleges that a term of a tenancy agreement has changed, the burden of proof rests with the party alleging the amendment. In these circumstances the Tenant bears the burden of proving the parties agreed to amend the date rent is due.

I find that the Tenant submitted insufficient evidence to establish that the Landlords agreed that rent was not due by the first day of each month. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Tenant’s testimony that the Landlord agreed that rent could be paid after the first day of each month or that refutes the female Landlord’s testimony that the Landlords did not agree that rent could be paid late.

I note that on July 01, 2015 the Tenant informed the Landlord, via text message, that she was unable to pay the full amount of rent due. I find that this text message helps to establish that the Tenant understood rent was due on the first day of each month. I find that the Landlord’s response that paying the rent the next day “would be fine” does not change the due date of the rent, nor does it establish that there was a previous agreement that rent could be paid late.

In adjudicating this matter I have placed no weight on the letter submitted by the Landlord’s plumber, dated November 14, 2016. I have placed no weight on this letter as the authenticity of the letter has been called into question and the “author” of that letter was unavailable to affirm the content of the letter.

I find that the Tenant contacted the Landlord on July 01, 2015, May 01, 2016, July 01,

2016, and October 01, 2016 to inform her that rent would not be paid by the first of the month. I find that this strongly suggests that the Tenant was aware that rent was due by the first day of each month.

As the Landlords is attempting to end this tenancy on the basis of rent repeatedly being paid late, the onus is on the Landlords to establish that rent has not been repeatedly paid late.

I find that the Landlord has submitted insufficient evidence to establish that rent was not paid when it was due on May 01, 2015. In reaching this conclusion I was heavily influenced by the absence of evidence, such as bank records, that corroborates the Landlords' submission that it was paid on May 02, 2015 or that refutes the Tenant's testimony that it was paid on May 01, 2015.

On the basis of the undisputed evidence I find rent was not paid when it was due on July 01, 2015.

I find that the Landlord has submitted insufficient evidence to establish that rent was not paid when it was due on August 01, 2015. In reaching this conclusion I was heavily influenced by the absence of evidence, such as bank records, that corroborates the Landlords' submission that it was paid on August 04, 2015 or that refutes the Tenant's testimony that it was paid on August 01, 2015.

On the basis of the undisputed evidence I find rent was not paid when it was due on May 01, 2016, July 01, 2016, and October 01, 2016.

Section 47(1)(a) of the *Act* authorizes a landlord to end a tenancy if a tenant is repeatedly late paying rent. Residential Tenancy Branch Policy Guideline #38, with which I concur, stipulates, in part, that three late payments are the minimum number sufficient to justify a notice under these provisions.

As the Tenant has been late paying her rent on at least three occasions during this tenancy, three of which were in 2016, I find that the Landlords have grounds to end this tenancy pursuant to section 47(1)(a) of the *Act*.

As I have determined that the Landlords have satisfied the legislative requirements to end this tenancy pursuant to section 47 of the *Act*, I dismiss the Tenant's application to set aside the One Month Notice to End Tenancy. As the application to set aside the Notice to End Tenancy has been dismissed, I grant the Landlords an Order of Possession, pursuant to section 55(1) of the *Act*.

As the Tenant's application to set aside the One Month Notice to End Tenancy has been dismissed, I dismiss her application to recover the fee for filing this Application for Dispute Resolution.

Conclusion

I grant the Landlords an Order of Possession that is effective two days after it is served upon the Tenant. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 28, 2016

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Residential Tenancy Branch